

LAW OFFICES

SHIFMAN & CARLSON, P.C.

31700 MIDDLEBELT ROAD, SUITE 126
 FARMINGTON HILLS, MICHIGAN 48334
 TELEPHONE: (248) 406-0620 • (800) 790-8851 • TELECOPIER: (248) 406-0218

DANIEL S. CARLSON
 E-MAIL: dcarlson@shifmanandcarlson.com

76003-001

OUR FILE NUMBER

September 9, 2010

Office of General Counsel
 Attn: Jeff S. Jordan
 Federal Election Commission
 999 East Street, NW
 Washington, D.C. 20463

Via Facsimile: 202-219-3923

Re: MUR 6337 - Response of the Republican Member Senate Fund

Dear Mr. Jordan:

I am writing on behalf of my client, the Republican Member Senate Fund. The Republican Member Senate Fund received your letter dated August 4, 2010 regarding the complaint filed by James R. Barry alleging that the Republican Member Senate Fund may have violated the Federal Election Campaign Act ("FECA") of 1971, as amended. The Republican Member Senate Fund submits that the complaint is without merit and thus the Commission should make a finding of "no reason to believe" and close this matter.

Mr. Barry's main complaint is that the Republican Member Senate Fund coordinated public communications with the Jay Riemersma for Congress Campaign Committee. The complaint alleges that because of this coordinated communication, the Riemersma Campaign Committee received an illegal excess contribution from the Republican Member Senate Fund in violation of 2 U.S.C. 441a(a)(2). The communication in question fails to meet the coordination standard and is therefore not a coordinated communication.

According to 11 CFR 109.21(a)

[a] communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:

(1) is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political committee;

RECEIVED
 FEDERAL ELECTION
 COMMISSION
 2010 SEP -9 PM 3:34
 OFFICE OF GENERAL
 COUNSEL

11044290705

Jeff S. Jordan
September 8, 2010
Page 2

- (2) Satisfies at least one of the content standards in paragraph (c) of this section; and
- (3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

More specifically, Mr. Barry complains that coordination occurred between Strategic National, a consulting company, and the Republican Member Senate Fund. The Riemersma Campaign hired John Yob of Strategic National to provide consulting services. See attached Exhibit 1. While it is arguable whether John Yob should or should not be considered an agent of the Riemersma Campaign, Strategic National as a whole is clearly not an agent of the Campaign. Per 11 CFR 109.3, an agent has the authority to act on behalf of the Campaign with regard to activities surrounding communications or expenditures. Any employees of Strategic National not assigned to the Riemersma Campaign would not have such authority, nor would anyone believe they had such authority.

Even further removed from the Riemersma Campaign is Charles Yob. Charles Yob is an independent contractor paid by Strategic National on a per project basis. Strategic National has hired Charles Yob to work on convention races in the State of Michigan. Such races include those for Attorney General, Secretary of State, and various positions on University Boards. Charles Yob has never provided content work for the Riemersma Campaign through Strategic National or otherwise. Any help Charles Yob has given to the Campaign, either by fundraising or publicly supporting Jay Riemersma, has been on his own time. See attached Exhibits 1 and 2. Under these circumstances, Charles Yob does not qualify as an agent of the Jay Riemersma Campaign under the definition found in the regulations. See 11 CFR 109.3.

Charles Yob is the President, Secretary, Treasurer and a Director of the Republican Member Senate Fund. It is true that John Yob was a Director of the Republican Member Senate Fund but he resigned his position in December, 2009. See attached Exhibit 1. The Republican Member Senate Fund updates its information with the State of Michigan annually, and this year's annual Information Update Form is attached as Exhibit 3. As you can see, John Yob is no longer listed as a Director and Mr. Scott Greenlee has assumed that role.

Even if the FEC considers John Yob and/or Strategic National as agents of the Riemersma Campaign, the communication in question still fails the coordination standard set forth in the Federal Regulations. The Republican Member Senate Fund does not dispute that it paid for the advertisement and that the communication thus satisfies the payment prong. There is similarly no dispute that the communication satisfies a content standard in 11 CFR 109.21(c). The communication in question refers to three House candidates and was run within 90 days of the Republican primary for Michigan's Second Congressional District. See 11 CFR 109.21(c)(4)(i).

11044290706

Jeff S. Jordan
September 9, 2010
Page 3

The communication fails however, to satisfy the conduct prong as set forth in 11 CFR 109.21(d). Among the types of conduct that satisfy the conduct prong, Mr. Barry claims that the facts meet the standards in 11 CFR 109.21(d)(1), (2) and (3). One of the types of conduct that satisfies the conduct standard is "Request or suggestion" explained in 11 CFR 109.21(d)(1):

- (i) The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or
- (ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the situation.

Mr. Barry claims that the communication was authorized by the Riemersma Campaign but he does not provide any evidence that the Riemersma Campaign either requested the communication or that they assented to its creation by the Republican Member Senate Fund. Mr. Barry's only evidence relating to this claim is that a fax was sent from Nevada regarding this advertisement and that John Yob may have been in Nevada at that time. John Yob has not been in Nevada since July 11, 2010. See attached Exhibit 1. The Republican Member Senate Fund hired Jordan Gehrke to create and run the advertisement. Mr. Gehrke placed the orders for the advertisement at the request of Charles Yob. Charles Yob did not discuss the communication with anyone involved in the Riemersma campaign. See attached Exhibit 2. Thus, Mr. Barry fails to satisfy the "request or suggestion" conduct standard.

Mr. Barry mentions "Material Involvement" as set forth in 11 CFR 109.21(d)(2) which is satisfied if "[a] candidate, authorized committee, or political party committee is materially involved in decisions regarding" the content, intended audience, means or mode of the communication, specific media outlet used, the timing or frequency or the size, prominence or duration of a communication. 11 CFR 109.21(d)(2). Mr. Barry seems to infer that Charles and John Yob's familial relationship necessitates that there was material involvement regarding the communication. However, Charles Yob had no contact with anyone in the Campaign or at Strategic National regarding these communications, nor did he notify anyone at either organization of his intention to purchase such communications. See attached Exhibit 2. Based on this evidence, there was no material involvement by the Campaign. Additionally, 11 CFR 109.21(d)(2) states that "[t]his paragraph is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source." Mr. Barry admits that the substance of the advertisement in question contains information similar to that publicly available on Jay Riemersma's campaign website. Mr. Barry provides no other evidence of material involvement.

11044290707

Jeff S. Jordan
September 9, 2010
Page 4

Mr. Barry also points to substantial discussion to satisfy the conduct standard. According to 11 CFR 109.21(d)(3), a communication meets the conduct standard if

[t]he communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee. A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, project, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

As previously mentioned, Charles Yob did not discuss the advertisement with the Riemersma Campaign or Strategic National. See attached Exhibit 2. Charles Yob may do work for Strategic National, but was not involved in Strategic National's work with the Riemersma Campaign. As previously discussed, Charles Yob himself is not an agent of the Riemersma campaign. Thus Mr. Barry's allegations of substantial discussion must fail because the evidence shows that contrary to his assertions, Charles Yob was not privy to any of the material information discussed by CFR 109.21(d)(3).

There are two additional conduct standards that Mr. Barry correctly does not mention in his complaint. The communication in question also does not satisfy these standards and thus does not fulfill the conduct prong. 11 CFR 109.21(d)(4) dictates that the conduct standard is satisfied if the person paying for the communication employs a "common vendor". This standard requires the person paying for the communication to hire a commercial vendor who has provided services to the candidate's campaign, the opponent's campaign or a political party committee. Additionally, the vendor provides information from the previous election that is material to the creation, production, or distribution of the communication. The complaint provides no basis upon which to satisfy the "common vendor" standard.

While Mr. Barry did not mention it in his complaint, the final category for the conduct prong is "former employee or independent contractor." 11 CFR 109.21(d)(5). This standard requires that a communication be paid for by person or an employer of a person who worked for the candidate. Additionally, the former employee or independent contractor uses information from the candidate and it is material in creating, producing, or distributing the communication. The facts and circumstances do not satisfy this standard. While Charles Yob may currently work on some contracts with Strategic National, he is not involved in the candidate's campaign committee. Thus, he cannot be considered an employee of the Riemersma Campaign. Further, Charles Yob

11044290708

Jeff S. Jordan
September 9, 2010
Page 5

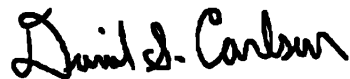
received no information pertinent to these communications while working on his contracts for Strategic National. See attached Exhibit 2.

Overall, Mr. Barry seems to argue that since Charles Yob and John Yob are related, their respective organizations are inherently coordinating their activities. In fact, Charles Yob and John Yob are two separate individuals and it cannot be inferred from their family relationship that they are coordinating. Moreover, John Yob has resigned from the Republican Member Senate Fund, and Charles Yob is not involved in Jay Riemersma's campaign in his work for Strategic National. Thus, the communication in question does not meet the definition of "coordinated communication."

The second issue Mr. Barry raises in his complaint is the acceptance of anonymous campaign contributions. The Republican Member Senate Fund will not address this issue as it relates only to the Jay Riemersma Campaign Committee.

The complaint submitted by Mr. Barry is without merit and fails to show that there was any coordination between the Republican Member Senate Fund and the Jay Riemersma Campaign Committee. Thus, I request that you dismiss the complaint against the Republican Member Senate Fund. Please contact me if you have any questions or need any further information.

Sincerely,



Daniel S. Carlson

DSC/sfm
enclosures

11044290709

11044290710

EXHIBIT 3

Ver 3.2 (03/08)

**MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES, CORPORATION DIVISION
NONPROFIT CORPORATION INFORMATION UPDATE
2010**

Identification Number 783467	Corporation Name REPUBLICAN MEMBER SENATE FUND	
Resident agent name and mailing address of the registered office CHARLES WYRB P.O. Box 248 HESPERIA MI 49421		
The address of the registered office 2020 GREEN HESPERIA MI 49421		
Describe the purpose and activities of the corporation during the year covered by this report: RAISE FUNDS AND DISTRIBUTE TO FEDERAL CANDIDATES		
Officer/Director Information		
NAME	TITLE	BUSINESS OR RESIDENCE ADDRESS
CHARLES W. YOB	PRESIDENT	2020 GREEN AVENUE HESPERIA MI 49421
CHARLES W. YOB	SECRETARY	2020 GREEN AVENUE HESPERIA MI 49421
CHARLES W. YOB	TREASURER	2020 GREEN AVENUE HESPERIA MI 49421
CHARLES W. YOB	DIRECTOR	2020 GREEN AVENUE HESPERIA MI 49421
SCOTT GREENLEE	DIRECTOR	1502 MANTON NE GRAND RAPIDS MI 49505
ROGER VILLERE, JR.	DIRECTOR	836 AURORA AVENUE METAIRIE LA 70005
Electronic Signature		
Filed By DANIEL S. CARLSON	File Attorney for RRSF	Phone 248 405-0620
<input checked="" type="checkbox"/> I certify that this filing is submitted without fraudulent intent and that I am authorized by the business entity to make any changes reported herein.		
Payment Information		
Payment Amount \$ 20.00	Payment Date/Time 08/16/2010 11:50:15	Reference Nbr 71315 0000 793467 2010

11044290711